

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Stephen Bain, :
Plaintiff, :
:
v. : File No. 2:07 CV 146
:
Transportation Corp. Of America, :
Corrections Corp. Of America, :
Dr. Lippmann, Dr. Warren, :
Vermont Department of :
Corrections, Robert Hofmann, :
Prison Health Service, :
Dr. Susan Wehry, State of :
Vermont, and John and Jane Doe, :
Defendants. :
:

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed May 7, 2008. Plaintiff's objections were filed May 19, 2008 and June 19, 2008. Defendants' response to said objections was filed on June 3, 2008.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's

Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

IT IS HEREBY ORDERED that the Vermont defendants' motion to dismiss (Paper 15) is GRANTED, that Bain's first motion to amend and/or join (Paper 14) be DENIED and his second motion (Paper 26) be GRANTED in part and DENIED in part. All claims against the State of Vermont, the Vermont Department of Corrections, Robert Hofmann and Dr. Susan Wehry are DISMISSED. The surviving portion of this case, which consists solely of conduct that is directly related to Bain's treatment during his interstate transport, be TRANSFERRED to the Middle District of Tennessee.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS CLOSED.

Dated at Burlington, in the District of Vermont, this 27th
day of June, 2008.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge